

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: September 30th, 2016

1. C.R.No.6329 of 2016

Budh Pal

...Petitioner

Versus

Shiv Charan &another

...Respondents

2. C.R.No.6330 of 2016

Budh Pal

...Petitioner

Versus

Shiv Charan &another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Kul Bhushan Sharma, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

By this common order, I shall dispose of two Civil Revision
Nos.6329 and 6330 of 2016.

Civil Revision No.6329 of 2016 has been filed against the order
dated 26.8.2016.

The petitioner, who is stated to be a subsequent vendee as per
the sale deed dated 28.8.2006, had filed an appeal by seeking leave of the
Court. The said appeal was accompanied by application seeking
condonation of delay, for, against the aforementioned judgment and decree,
an application under Order 9 Rule 13 CPC along with application under
Order 1 Rule 10 CPC and objections under Section 47 CPC were moved in
2015, but the same have been dismissed by the trial Court vide common

order dated 26.8.2016. However, against the dismissal of application under Order 9 Rule 13 CPC, an appeal has been filed in the Lower Appellate Court in which an ad-interim injunction has been granted, therefore, the present revision petition.

Since the petitioner has filed an appeal against the judgment and decree, I am of the view that in view of the order passed on the application under Order 1 Rule 10 CPC, objections become redundant, but the fact remains that the appeal had been accompanied by the application seeking condonation of delay as the petitioner was not properly legally advised and had not availed the proper remedy.

Mr.Kul Bhushan Sharma, learned counsel for the petitioner, during the course of hearing, given an undertaking to withdraw the appeal filed against the dismissal of the application under order 9 Rule 13 CPC. In my view, once the appeal is stated to have been filed after the previous date, i.e., during the interregnum and accompanied by application, the period spent in the aforementioned litigation shall be considered by the Lower Appellate Court sympathetically while granting the relief and deciding the application. In my view, once the petitioner has availed the remedy of appeal, revision petitions have become infructuous.

The dismissal of the application/objection would not come in the way of the petitioner in the pending appeal and the Lower Appellate Court shall decide the same uninfluenced by the findings rendered in the impugned order.

In case, an application for stay is moved in the freshly instituted appeal seeking leave of the Court, the same shall be considered in view of the fact that in the appeal against the dismissal of the application under

Order 9 Rule 13 CPC, there was an interim stay.

Till decision of application seeking condonation of delay,
dispossession shall remain stayed.

September 30th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No